

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TOBY EARL, an individual; SHYHEEM  
SMITH, an individual; DEATRA ENARI,  
and individual; MICHELLE PICKTHALL,  
an individual; and JAMES SKADOWSKI,  
an individual,

Plaintiffs,

vs.

BRIAD RESTAURANT GROUP, LLC, a  
New Jersey limited liability company; and  
DOES 1 through 100, inclusive,

Defendants.

Case No.: 2:16-cv-02217-GMN-PAL

**ORDER**

Pending before the Court is the Motion for Summary Judgment, (EFC No. 5), filed by Plaintiffs Toby Earl, Deatra Enari, Michelle Pickthall, James Skadowski, and Shyheem Smith (collectively “Plaintiffs”). Defendant Briad Restaurant Group, LLC (“Defendant”) filed a Response, (ECF No. 20), and Plaintiffs filed a Reply, (ECF No. 21).

Also pending before the Court is the Motion to Dismiss, (ECF No. 13), filed by Defendant. Plaintiffs filed a Response, (ECF No. 17), and Defendant filed a Reply, (ECF No. 19). However, because the Court finds that the Supreme Court’s decisions in *Murphy Oil, U.S.A., Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015); *Morris v. Ernst & Young, LLP*, 834 F.3d 975, 984 (9th Cir. 2016); and *Patterson v. Raymours Furniture Co., Inc.*, 2016 WL 4598542, at \*2 (2d Cir. Sept. 2, 2016), as corrected (Sept. 7, 2016), as corrected (Sept. 14, 2016) (collectively “*Morris*”) are dispositive in determining whether class-arbitration waivers in arbitration agreements are valid and enforceable, the case is **STAYED** pending the Supreme Court’s decision in *Morris*, and the pending motions are **DENIED without prejudice**.

1 **I. BACKGROUND**

2 **A. Procedural History**

3 This dispute arises out of alleged violations of an amendment to the Nevada Constitution  
4 setting certain minimum wage requirements for employers known as the Minimum Wage  
5 Amendment (“MWA”). Plaintiffs are current and former employees of various TGI Friday’s  
6 restaurant chain locations throughout Nevada, which are owned by Defendant. On May 19,  
7 2014, Plaintiffs initiated the original *Hanks* case, *Hanks, et al. v. Briad Restaurant Group, LLC*,  
8 No. 2:14-cv-00786-GMN-PAL (D. Nev. 2014), allegedly as a result of Defendant’s failure to  
9 pay Plaintiffs the lawful minimum wage, because Defendant improperly claimed eligibility to  
10 compensate employees at a reduced minimum wage rate under Nev. Const. art. XV, § 16. (*See*  
11 Compl. ¶ 3–4, ECF No. 1).

12 On July 27, 2015, the Court dismissed five Plaintiffs from the *Hanks* action who were  
13 parties to various arbitration agreements and ordered them to arbitrate their MWA claims  
14 against Defendant. (Order, *Hanks* case, ECF No. 93). On September 20, 2016, the dismissed  
15 *Hanks* Plaintiffs initiated the instant *Earl* action, “seeking an order from this Court declaring  
16 provisions in Defendant’s arbitration agreements that purport to prohibit class or representative  
17 actions, even in arbitration proceedings, are invalid pursuant to National Labor Relations Act.”  
18 (Compl. ¶ 1, *Earl* case). The *Earl* Plaintiffs allege that they intend to file a class arbitration, but  
19 that the American Arbitration Association requires a court order declaring such provisions  
20 invalid before accepting any class arbitration claims. (*Id.* ¶¶ 10, 12).

21 On September 20, 2016, Plaintiffs filed the instant lawsuit seeking to overturn the  
22 Court’s order in *Hanks* regarding the class-arbitration waiver provision in Plaintiffs’ arbitration  
23 agreements. (*See generally id.*). Specifically, Plaintiffs seek declaratory relief that the class  
24 arbitration waiver within their arbitration agreements is invalid. (*Id.* ¶¶ 12–13).

1           **B.     The Supreme Court’s Pending *Morris* Decision**

2           After Plaintiffs filed their Motion, the Supreme Court granted certiorari in *Ernst &*  
3 *Young, LLP v. Morris*, No. 16-300, 137 S. Ct. 809 (U.S. Jan. 13, 2017). The Supreme Court  
4 will resolve in *Morris* the question of whether class-arbitration waivers are unenforceable—a  
5 question that has caused a circuit split with the Ninth and Seventh holding that waivers are  
6 unenforceable, and the Second, Fifth, and Eighth holding that the waivers are enforceable. *See*  
7 *Morris v. Ernst & Young, LLP*, 834 F.3d 975, 984 (9th Cir. 2016); *Lewis v. Epic Systems Corp.*,  
8 823 F.3d 1147 (7th Cir. 2016); *Sutherland v. Ernst & Young LLP*, 726 F.3d 290 (2d Cir. 2013);  
9 *Patterson v. Raymours Furniture Co., Inc.*, 2016 WL 4598542, (2d Cir. Sept. 2, 2016), as  
10 corrected (Sept. 7, 2016), as corrected (Sept. 14, 2016); *D.R. Horton, Inc. v. N.L.R.B.*, 737 F.3d  
11 344 (5th Cir. 2013); *Murphy Oil USA, Inc. v. N.L.R.B.*, 808 F.3d 1013, 1015 (5th Cir. 2015);  
12 *Cellular Sales of Missouri, LLC v. N.L.R.B.*, 824 F.3d 772 (8th Cir. 2016); *Owen v. Bristol*  
13 *Care, Inc.*, 702 F.3d 1050 (8th Cir. 2013).

14           **II.     LEGAL STANDARD**

15           “[T]he power to stay proceedings is incidental to the power inherent in every court to  
16 control the disposition of the causes of action on its docket with economy of time and effort for  
17 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A trial  
18 court may, with propriety, find it is efficient for its own docket and the fairest course for the  
19 parties to enter a stay of an action before it, pending resolution of independent proceedings  
20 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.  
21 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible  
22 damage which may result from the granting of a stay; (2) the hardship or inequity which a party  
23 may suffer in being required to go forward; (3) the orderly course of justice measured in terms  
24 of the simplifying or complicating of issues, proof, and questions of law which could be  
25 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

1 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside  
2 while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299  
3 U.S. at 255. A district court’s decision to grant or deny a *Landis* stay is a matter of discretion.  
4 *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
5 2007).

### 6 **III. DISCUSSION**

7 The *Morris* decision will directly impact whether, as a matter of law, Plaintiffs are able  
8 to bring forth their claims contesting the enforceability of class-arbitration waivers.  
9 Specifically, if the Supreme Court finds that class-arbitration waivers are unenforceable, then  
10 Plaintiffs will be unable to pursue their desired relief in the instant action. (*See* Compl. ¶¶ A–  
11 D).

12 Because of this, the *Landis* factors weigh strongly in favor of staying this action pending  
13 the *Morris* decision. Indeed, the possible prejudice to the parties is minimal as the *Morris*  
14 decision will likely be issued within the next year per the Supreme Court’s customary practice.  
15 Additionally, the possible judicial resources also may be unnecessarily expended reviewing the  
16 adequacy of the pleadings and resolving discovery disputes in a case that may be prevented  
17 from moving forward based on the Supreme Court’s decision. Because the *Morris* decision is  
18 squarely on point with what Plaintiffs seek, the orderly course of justice likewise weighs in  
19 favor of a stay. Accordingly, the Court finds that staying this action until the Supreme Court  
20 issues an opinion in *Morris* would be efficient for the Court’s own docket and the fairest course  
21 for the parties. *See Leyva*, 593 F.2d at 863.

### 22 **IV. CONCLUSION**

23 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion for Summary Judgment, (ECF No.  
24 5), is **DENIED without prejudice** with permission to renew within thirty days of the Supreme  
25 Court’s decision in *Morris*.

**IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss, (ECF No. 13), is **DENIED without prejudice** with permission to renew within thirty days of the Supreme Court's decision in *Morris*.

**IT IS FURTHER ORDERED** that this case is **STAYED** pending a decision of the Supreme Court in *Morris*. Beginning on January 7, 2018, the parties must submit a joint status report updating the Court on the status of this case every ninety days.

**DATED** this 8 day of August, 2017.

Gloria M. Navarro, Chief Judge  
United States District Judge